IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

NOTICE OF MOTION NO.1795 OF 2007

IN

SUIT NO. 4448 OF 2000

Ajay Bhimsen Gupta & ors. : Plaintiffs.

versus

Jaikedar Strips Pvt.Ltd. : Defendants.

Mr.Rajesh C. Shah for the plaintiffs.

Mr.H.S.Rajeshirke for the defendants.

CORAM : A.A.SAYED, J

DATED : OCTOBER 18, 2007.

P.C.

1. Heard the learned counsel for the parties. This notice of motion has been taken out by the plaintiffs for setting aside the order dated 31st July 2003 dismissing the suit for default and condonation of delay in taking out this Notice of Motion.

2. The suit is a summary suit filed by the plaintiffs for recovery of a sum of money. The case of the plaintiffs is that a writ of summons in the above suit was served upon the defendants and affidavit of service was also filed. However, the defendants did not file their vakalatnama. Another suit being Summary Suit No.4510 of 2000 was filed by the Plaintiffs against one Kokil Gosalia inter alia for recovery of money. According to the plaintiffs, they were waiting for both the matters to appear on board for the purpose of passing ex-parte decree and since the matters did not appear on board, around February 2007, an enquiry was made in the office of the Prothonotary and Senior Master as to why both the matters did not appear on board, whereupon the plaintiffs' advocate was informed that since the original affidavit of service and the original documents along with lists were not filed in both the matters, the matters did not appear on board for passing ex-parte decree.

3. Accordingly on 26th February 2007, the advocates for the plaintiffs vide their precipes filed affidavit of service and the original

documents along with the lists in both the matters. Thereafter Suit No.4510 of 2000 appeared on board before the Hon'ble Court on 3rd April 2007 for passing the ex-parte decree and, accordingly ex-parte decree was passed in Suit No.4510 of 2000. However, the present suit being Suit No.4448 of 2000 did not appear on board for passing an ex-parte decree.

4. Thereafter the Advocate for the plaintiffs made an inquiry in the office of the Prothonotary and Senior Master and he was informed that the suit had come on board before the Court on 31st July 2003 and the same was dismissed for default. The plaintiffs' case is that his advocate had missed the matter and therefore nobody appeared for the plaintiffs before the Court on 31st July 2003 and that is how the matter came to be dismissed and, it is only in the month of April 2007 the plaintiffs learnt about dismissal of the suit. It is, therefore, prayed that the order dated 31st July 2003 dismissing the suit for default be set aside and delay in taking out this notice of motion be condoned. It is further submitted that sufficient cause for condoning the delay has been

made out.

5. The defendants-company has filed its reply denying the averments made in the notice of motion. The learned counsel appearing for the defendants-company contended that no case is made out for condoning the delay and for setting aside the order of dismissal.

6. I have heard learned counsel for the parties. I am satisfied that sufficient cause has been made out for condoning the delay and to meet the ends of justice, an opportunity ought to have been given to the plaintiffs to prosecute the suit on payment of costs. I, therefore, pass the following order :-

:ORDER:

Notice of motion is made absolute in terms of prayer clauses (a) and (b) subject to payment of costs of Rs.3,000/-.

Costs to be paid within a period of three weeks from today.

Notice of motion is disposed of accordingly.

[A.A.SAYED,J]